

Decision Notice



Decision 081/2008 T.O.M. Airdrie Limited and the Chief Constable of
Strathclyde Police

Correspondence etc. in relation to T.O.M. (Airdrie) Limited and the Strathclyde
Vehicle Recovery Scheme

Reference No: 200701024
Decision Date: 14 July 2008

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Scottish Information Commissioner

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Summary

MacRoberts, a firm of solicitors acting on behalf of T.O.M. (Airdrie) Limited (TOM), requested certain information relating to the termination of a sub-contract from the Chief Constable of Strathclyde Police (Strathclyde Police). The Police responded by relying upon section 18(1) of FOISA to neither confirm nor deny whether any information existed or was held. TOM were not satisfied with this response and MacRoberts asked Strathclyde Police to review their decision. Strathclyde Police carried out a review and, while maintaining reliance on section 18, released certain information to the applicant. The applicant remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which Strathclyde Police released further information and substituted reliance on a number of exemptions under FOISA for their earlier reliance on section 18, the Commissioner found that Strathclyde Police had partially failed to deal with MacRoberts' request for information in accordance with Part 1 of FOISA. He upheld Strathclyde Police's decision to withhold certain information in terms of sections 25(1) (Information otherwise accessible); 30(c); 33(1)(b) (Commercial interests and the economy); 35(1)(a) and (b) (Law enforcement); 36(1) and (2) (Confidentiality) and 38(1)(b) (Personal information). The Commissioner required Strathclyde Police to release one piece of information previously redacted from a document (not being satisfied that the disclosure of the information, which he accepted was personal data, would breach the data protection principles) and noted technical breaches in the way in which the information request had been dealt with.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2 (Effect of exemptions); 8(1)(b) (Requesting information); 21(1) (Review by Scottish public authority); 25 (1) (Information otherwise accessible); 30(c) (Prejudice to effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy); 35(1)(a) and (b) (Law enforcement); 36(1) and (2) (Confidentiality); and 38(1)(b) (Personal information).

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions - definition of "personal data"); Schedule 1 (The data protection principles - the first principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data - condition 6(1))

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.



Background

1. Strathclyde Police run a Vehicle Recovery Scheme (SRC) which is operated under contract by GRG Public Resources Limited (GRG). As part of this contract, GRG sub-contracted work to "Recovery Operators", one such operator being T.O.M. Airdrie Limited (TOM).
2. On 3 April 2007, MacRoberts wrote to Strathclyde Police on behalf of TOM, requesting the following information:
 - all information relating to any contractual arrangements (including copies of any contracts whether concluded or not) in place between Strathclyde Police and GRG Public Resources Limited where they relate to T.O.M. Airdrie Limited and the Strathclyde Removal Scheme including any and all information relating to T.O.M. Airdrie Limited's removal, suspension and or termination from such contractual arrangements, including any recommendation of such;
 - all minutes of meetings, telephone notes, discussion notes, and correspondence or other such documents between Strathclyde Police and GRG Public Resources Limited and or any other party or parties where such information relates to T.O.M. Airdrie Limited and or its company officers, agents or employees whether in respect of the contractual arrangements for the Strathclyde Removal Scheme or not;
 - any assessments, reports, notes or other information in respect of the performance or otherwise of T.O.M. Airdrie Limited and or its company officers, employees or agents under the contractual arrangement for the Strathclyde Removal Scheme irrespective of whether such information has been provided by parties other than Strathclyde Police or GRG Public Resources Limited;
 - all correspondence, telephone notes, file notes or otherwise between Strathclyde Police and GRG Public Resources Limited and or any other party or parties in relation to the suspension and or termination of T.O.M. Airdrie Limited from the contractual arrangements in relation to the Strathclyde Removal Scheme; and
 - all information relating to the general fitness of T.O.M. Airdrie Limited and or its company officers, employees or agents to carry out its duties under the contractual arrangements for the Strathclyde Removal Scheme or any other contractual arrangements under consideration by Strathclyde Police and or GRG Public Resources Limited irrespective of whether such information has arisen under any vetting policy operated by Strathclyde Police or not.

The letter stated that any personal data the disclosure of which was exempted under section 38 of FOISA could be redacted prior to response.

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3. On 6 April 2007, Strathclyde Police wrote to MacRoberts indicating that they would be unable to respond to the above request as it did not comply with section 8(1)(b) of FOISA. In particular this letter indicated that any application must include the name of the applicant and an address for correspondence. The request was later accepted as valid, however, with an agreed receipt date of 5 April 2007.
4. On 8 May 2007, Strathclyde Police wrote to MacRoberts in response to their client's request for information indicating that they were relying upon section 18 of FOISA and neither confirming nor denying the existence of the information requested or whether it was held. They further stated that if such information was held, they would consider it to be exempt under one of the sections referred to in section 18, namely sections 28 to 35, 39(1) or 41.
5. On 11 May 2007, MacRoberts wrote to Strathclyde Police on their client's behalf, requesting a review of their "decision to refuse the above noted request" and in particular drew Strathclyde Police's attention to the provisions of section 1 of FOISA.
6. Following further correspondence, Strathclyde Police wrote to MacRoberts on 6 June 2007, to inform them that the Review Panel had determined that a "wider interpretation" could have been applied to the initial request by the force's FOI Unit and consequently that the Unit had been asked to review its initial interpretation. Strathclyde Police indicated that the Review Panel would again meet on 13 June 2007 and would respond in relation to the review thereafter.
7. On 2 July 2007, Strathclyde Police wrote to notify Mac Roberts of the outcome of their review. The review upheld the decision regarding the use of section 18 in relation to the initial interpretation of the request. The review also confirmed that as a result of applying the wider interpretation referred to above, certain further information had been identified, some of which was being released. Certain documents were released with personal data redacted in terms of section 38(1)(b) of FOISA, while Strathclyde Police considered others to be exempt in terms of sections 33(1)(b), 35(1)(a) and (b), 36(1) and (2) and 38(1)(b).
8. On 19 July 2007, MacRoberts wrote to the Commissioner's Office on behalf of their client, stating that they were dissatisfied with the outcome of Strathclyde Police's review and applying to him for a decision in terms of section 47(1) of FOISA.
9. In addition to comments on substantive aspects of Strathclyde Police's decisions, MacRoberts asked the Commissioner to consider Strathclyde Police's initial refusal to respond to the request and their alleged failure to meet the statutory time limits in relation to the review.
10. The application was validated by establishing that the applicant had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.



Investigation

11. On 26 July 2007, Strathclyde Police were notified in writing that an application had been received from MacRoberts (on behalf of their client) and asked to provide the Commissioner's Office with copies of the information withheld from the applicant. Strathclyde Police responded with the information requested (along with detailed submissions on their handling of the case) and the case was then allocated to an investigating officer.
12. The investigating officer subsequently contacted Strathclyde Police, asking them to provide comments on the application and to respond to specific questions in relation to it.
13. Examination of the documents provided by Strathclyde Police (taking the broadest reasonable view of the request, which in all respects seeks information relating specifically to TOM) showed that while certain information withheld came within the scope of the request as set out at paragraph 1 above, a quantity of the information identified as a result of the "wider interpretation" referred to at paragraph 7 above fell outwith the scope of the request, either due to its content or because it was created after the date of the applicant's request for information. The Commissioner will consider in this decision only that information he considers genuinely to fall within the scope of the request.
14. During the investigation Strathclyde Police confirmed that they were no longer relying upon section 18, but rather that they would be relying upon a combination of the exemptions under sections 25(1), 30(c), 33(1)(b), 35(1)(a) and (b), 36 (1) and (2), and 38(1)(b) of FOISA. The application of these exemptions will be considered further in the Commissioner's analysis and findings below.
15. MacRoberts having received redacted versions of a number of documents, they advised that their client remained dissatisfied with regard to the redactions made and requested that the Commissioner make a decision on these. As MacRoberts have been advised, the decision will focus on the information remaining withheld from their client.

Commissioner's analysis and findings

16. In coming to a decision in this matter, the Commissioner has considered all of the information and the submissions that have been presented to him by both the MacRoberts and Strathclyde Police and he is satisfied that no matter of relevance has been overlooked.



Technical issues

17. The Commissioner will first of all consider the technical aspects of the application, in particular Strathclyde Police's initial view that the request for information dated 3 April 2007 did not comply with section 8(1)(b) of FOISA and therefore was not a valid information request, and their alleged failure to respond to the applicant's request for review within the time laid down by section 21(1) of FOISA.
18. Section 8(1)(b) requires that a request for information must state the name of the applicant and an address for correspondence. In this case the request of 3 April 2007 was on MacRoberts' headed notepaper, made specific reference to the request being made on behalf of TOM and contained both the correspondence address of MacRoberts and the address of TOM's registered office. The Commissioner is satisfied, therefore, that the request complied in all respects with section 8(1)(b) of FOISA and that Strathclyde Police were wrong to state that it did not so comply.
19. In response to this point, Strathclyde Police intimated that the initial request for information had asked that the response be in electronic format but that no email address had been provided. While it may have been helpful for this to have been provided at that point, the Commissioner cannot accept that failure to do so rendered the request invalid. In any event, he notes that the request dated 3 April 2007 was in fact progressed as valid.
20. Section 21(1) of FOISA states that a Scottish public authority receiving a requirement for review must comply promptly, and in any event by not later than the twentieth working day after receipt by it of the requirement (subject to certain exceptions which are not relevant in this case).
21. In this case MacRoberts requested a review on 11 May 2007 and, while Strathclyde Police were in further correspondence, they did not in fact provide a response to that request until 2 July 2007.
22. The Commissioner finds therefore that Strathclyde Police failed to respond to the request for review within the time allowed by 21(1) of FOISA.

Section 25 – information otherwise accessible

23. The Commissioner is content that a number of the documents withheld consist of correspondence involving MacRoberts or another firm which had previously acted for TOM and as such would be in possession of either MacRoberts (in their capacity as TOM's solicitors) or TOM. He is therefore satisfied that the exemption in terms of section 25(1) has been correctly applied to the information in these documents. The exemption in section 25(1) is absolute and therefore the Commissioner is not required to carry out the public interest test contained in section 2(1)(b) of FOISA.



Section 36 — Confidentiality

24. Strathclyde Police relied upon section 36 (1) and (2) of FOISA in relation to the information in a number of documents.

Section 36(1)

25. Section 36(1) exempts information from disclosure if it is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. This includes communications which are subject to legal professional privilege, one aspect of which is legal advice privilege. Legal advice privilege covers communications between lawyer and client in which legal advice is sought or given. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled. The communication must be with a professional legal adviser, such as a solicitor (including an in-house one). The legal adviser must be acting in their professional capacity as such and the communications must occur in the context of their professional relationship with their client. The information must be confidential as between lawyer and client: privilege does not extend to matters known to the legal adviser through sources other than the client or to matters in respect of which there is no reason for secrecy.
26. Having examined the information withheld under section 36(1), the Commissioner accepts that it meets all of the requirements set out in the preceding paragraph and therefore is subject to legal professional privilege and is therefore exempt information under section 36(1). The exemption in section 36(1) is a qualified exemption, however, which means that even if it applies the information must be released unless in all the circumstances of the case, applying the public interest test in section 2(1)(b) of FOISA, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest test – section 36(1)

27. As the Commissioner has stated in previous decisions, the Courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds and there are many judicial comments on the fundamental nature of this confidentiality in our legal system. Many of the arguments in favour of maintaining confidentiality of communications were discussed in *Three Rivers District Council and Others v Governor and Company of the Bank of England* (2004) UK HL 48: <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd041111/riv-1.htm>.
28. In *Decision 023/2005 Mr David Emslie and Communities Scotland*, the Commissioner concluded that there would always be a strong public interest in maintaining the right to confidentiality of communications between legal adviser and client and therefore, while he would consider each case on an individual basis, he would be likely to order the release of such communications in highly compelling cases only. He has reiterated this in a number of subsequent decisions.



29. Having considered the competing public interest arguments in relation to the information in question, those in favour of disclosure including the public interest in authorities being accountable for their decisions, the Commissioner is of the view that the public interest in allowing legal advice to be requested, received and discussed in confidence (and therefore in maintaining the exemption), outweighs that in disclosing the information in this case. On balance, therefore, the Commissioner concludes that Strathclyde Police were correct to withhold information under section 36(1) of FOISA.
30. Section 36(2) states that information is exempt information if it was obtained by a Scottish public authority from another person (including another such authority); and its disclosure by the authority so obtaining it to the public (otherwise than under FOISA) would constitute a breach of confidence actionable by that person or any other person.
31. In this case the Commissioner is satisfied that the information to which section 36(2) has been applied was supplied to the authority by another person. He accepts that the information has the necessary quality of confidence and was provided under an implicit obligation of confidentiality, and that its disclosure could cause damage to the person who provided it. In all the circumstances, therefore, he is satisfied that disclosure of the information would constitute a breach of confidence actionable by that person, and that the information is exempt under section 36(2) of FOISA. This is an absolute exemption and does not require consideration of the public interest test contained in section 2(1)(b) of FOISA.

Section 35(1)(a) and (b) — Law enforcement

32. The police relied upon section 35(1)(a) and (b) for the non-disclosure of certain information.
33. In order for an exemption under section 35 (1) (a) and/or (b) to apply, the Commissioner has to be satisfied that the disclosure of the information would, or would be likely to, prejudice substantially, the prevention or detection of crime and/or the apprehension or prosecution of offenders.
34. As outlined in his *Decision 013/2007 Mr D and the Chief Constable of Strathclyde Police*, with regard to the exemption under section 35(1)(a), the Commissioner is of the view that the term “the prevention or detection of crime” encompasses any action taken to anticipate or prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could include activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and prevention.
35. Section 35(1)(b) has a narrower scope than section 35(1)(a), although there is likely to be a considerable overlap between the two exemptions. The Commissioner considers that section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders or to more general techniques (such as the investigative processes used).



36. Strathclyde Police argued in this case that the disclosure of the information in question would result in prejudice to law enforcement as it recorded investigations, incidents and non-disclosed contact details. Its disclosure would give the public details of such matters gathered, used or intended for policing purposes. The disclosure of such information would impact on public confidence, hinder investigations, disrupt working practices and would be likely to prejudice substantially the detection of crime and the apprehension or prosecution of offenders.
37. Without going into the details of the withheld information or any more detailed arguments put forward by Strathclyde Police, because to do so would of necessity result in disclosure of elements of that withheld information, the Commissioner is satisfied in the circumstances, having considered the subject matter and content fully, that the information withheld under section 35(1)(a) and (b) of FOISA is all sufficiently closely linked to the relevant requirements of policing and law enforcement that its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders. He has reached this conclusion taking due account of the concerns expressed by MacRoberts as to the relevance of these exemptions in the circumstances: having considered the information, he does not consider these concerns to be well founded.
38. Section 35(1)(a) and (b) of FOISA are both qualified exemptions, which means that their application is subject to the public interest test set out in section 2(1)(b) of FOISA, as described more fully above. The Commissioner will go on to consider the public interest arguments having considered the application of the exemption in section 33(1)(b) of FOISA.

Section 33(1)(b) - Commercial interests and the economy

39. The police also relied upon section 33(1)(b) of FOISA in relation to certain information. Section 33(1)(b) states that information is exempt if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).
40. In this case, Strathclyde Police argued that the withheld information related to the business practices, methods and performance of certain commercial companies and as such was commercially sensitive. Strathclyde Police further argued that release would cause a loss of confidence in the companies and damage their reputations, thereby affecting their commercial standing. This would prejudice the reputation of Strathclyde Police and be likely to prejudice substantially the commercial interest of the companies concerned.
41. On receiving the redacted information, MacRoberts stated that some of the redactions extended to only 6-8 lines of text and they were of the opinion that this would ordinarily be insufficient to describe the business practice, methods and performance of one commercial company, never mind more than one. They sought clarification on this point and on how many companies were potentially involved (there being apparent ambiguity as to this in Strathclyde Police's submissions), while also questioning Strathclyde Police's conclusions on substantial prejudice and the public interest.



42. The Commissioner has taken due account of MacRoberts comments on behalf of their client in reaching his conclusions on section 33(1)(b). While accepting that the redactions in question are relatively minor in terms of the amount of text redacted, he considers the content to be significant when read in context. While being unable to comment in greater detail without disclosing elements of the withheld information, the Commissioner is satisfied from that content that release of the information in question would be likely to prejudice substantially the commercial interests of the persons to whom it refers and therefore that the redacted information is exempt under section 33(1)(b).
43. Section 33(1)(b) of FOISA is also subject to the public interest test contained in section 2(1)(b) of FOISA, which the Commissioner will now go on to consider.

Public interest test

44. The arguments considered by Strathclyde Police when addressing the public interest were broadly the same in relation to the exemptions in sections 33(1)(b) and 35(1)(a) and (b). The public interest arguments favouring disclosure cannot be set out in detail without disclosing or alluding to elements of the information withheld, but they included accountability of a public authority for its decisions, public awareness of certain matters, the more specific interests of the subject(s) of the information and accountability for the expenditure of public funds.
45. Once again, the public interest arguments against disclosure considered by Strathclyde Police cannot be set out in full without disclosing or alluding to elements of the information withheld, but they included the effectiveness of criminal investigations, the interests of third parties potentially affected by disclosure, fair treatment of any person referred to in the information and protection of the flow of information in relation to potential crimes.
46. On balance, Strathclyde Police concluded that the public interest in disclosure of the information was outweighed by the public interest in withholding it and maintaining the exemptions.
47. MacRoberts were also given an opportunity to present arguments in relation to the consideration of the public interest test, but chose not to do so.
48. Having considered the subject matter and content of the information withheld under sections 33(1)(b) and 35(1)(a) and (b) of FOISA, the Commissioner is content on balance (noting the considerations taken into account by Strathclyde Police when carrying out the public interest test) that the public interest in disclosing the information is outweighed by the public interest in maintaining these exemptions and therefore that Strathclyde Police were correct to withhold the information under the exemptions in question.

Section 30(c) – prejudice to effective conduct of public affairs

49. Strathclyde Police released a number of documents subject to redaction of certain internal contact details under section 30(c) of FOISA. In relation to their application of this exemption, Strathclyde Police relied upon the reasoning in the Commissioner's *Decision 070/2007 Mr Sandy Smith and the Chief Constable of Grampian Police*.



50. MacRoberts requested clarification regarding the redaction of certain contact details namely, the job titles of individuals. Whilst they noted that decision 70/2007 dealt with the matter of internal telephone numbers (which they had no desire to know), they would like further clarification regarding the basis for the redaction of job titles.
51. The Commissioner is in fact satisfied that the contact information to which section 30(c) has been applied is all of the same description as that considered in Decision 070/2007, i.e. direct and internal contact numbers. He notes that this is not information MacRoberts or their clients have any desire to know, but for the sake of completeness sees no reason (either in the substantive application of the exemption or in relation to the public interest) why he should reach a different conclusion on that material in this particular case. In the circumstances, therefore, he would conclude that the information in question was correctly withheld under section 30(c).

Section 38(1)(b) – Personal Information

52. The Commissioner will now consider under section 38(1)(b) the remaining redactions which he has not considered properly withheld under any of the exemptions considered above. These are mainly contact details of individuals external to Strathclyde Police, the exception being a small redaction to the third paragraph of document 14.
53. The exemption under section 38 relates to personal information. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it constitutes personal data (as defined in section 1(1) of the DPA), the disclosure of which to a member of the public would contravene any of the data protection principles contained in Schedule 1 to the DPA. This particular exemption is an absolute exemption, so where it applies there is no requirement to carry out the public interest test contained in section 2(1)(b) of FOISA.
54. On examining the redacted contact details the Commissioner found that some of these were available on the GRG website or had been released to MacRoberts within other correspondence. While Strathclyde Police did not intimate reliance on section 25(1) of FOISA for this information, the Commissioner considers these details to be reasonably obtainable by the applicant otherwise than requesting them under FOISA, and therefore that they are in fact exempt under section 25(1).
55. In relation to the remaining redacted contact details, the Commissioner first has to establish whether the information is personal data as defined in section 1(1) of the DPA. Section 1(1) is reproduced in the Appendix to this decision. Having considered the information, the Commissioner is satisfied that the individuals concerned can be identified from it. It is biographical of each of them in a significant sense and focuses on them individually. Therefore, it relates to each of them and should be considered to be their personal data. The Commissioner is also satisfied, however, that none of it is the individuals' sensitive personal data as defined in section 2 of the DPA.



56. As the Commissioner is satisfied that the redacted information is personal data, he now has to go on to consider whether release of this information would breach any of the data protection principles.
57. In this case, Strathclyde Police argued that release of the information would breach the first data protection principle, in that that the processing of the information (in this case by disclosure) would be unfair. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, that it shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met. As no sensitive personal data is involved, there is no requirement to consider any of the conditions in Schedule 3 to the DPA.
58. Condition 6 of Schedule 2 provides for personal data being processed where:
- “The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
59. Although any arguments provided by MacRoberts in relation to section 38(1)(b) focus on information relating to police contact details, the Commissioner can accept that the applicant may consider themselves to have a legitimate interest in gaining access to the contact details of persons outwith Strathclyde Police involved in the relevant contract. In the circumstances, however, it is difficult to identify what that legitimate interest might be. On the other hand, the persons to whom the information relates have legitimate interests in being able to provide their details to a Scottish public authority without the assumption that it will be released to the public at large, since release under FOISA would mean just that. In this case, the business in question has made a conscious decision as to which contact details to publish on its website. Given that it has not published the details which have been redacted from the information released to the applicant, the Commissioner concludes that neither the business in question nor the individuals to whom the information relates would expect this information to be made publicly available. In addition, the business has indicated that it considers the relevant details to be confidential.



60. Taking all relevant information available to him into account, and noting in particular the reasonable expectations of those to whom the information relates, the Commissioner is satisfied on balance that such legitimate interest as the applicant and the wider public may have in disclosure of the contact details is outweighed by the countervailing prejudice to the rights, freedoms and legitimate interests of the data subjects, and therefore that disclosure is unwarranted in this case by reason of such prejudice and condition 6 cannot be met. Noting in particular that the individuals to whom the information relates have not consented to disclosure of the information, the Commissioner can identify no other condition in Schedule 2 which might be relevant to the processing of the information withheld. He is satisfied, therefore, that release of this information would not be fair or lawful processing and therefore that the exemption under section 38(1)(b) of FOISA applies to the redacted contact details.
61. Carrying out the same exercise in relation to the text redacted from the third paragraph in document 14, the Commissioner can see a clear interest, on the part of the applicant and more widely, in being satisfied as to the matters disclosed in this piece of text. On the other hand, he cannot identify any reason why it should be withheld by reason of the rights, freedoms or legitimate interests of the data subject. In reaching the conclusion, he has taken due account of the relevant guidance produced by the Information Commissioner, both in *Freedom of Information Act Awareness Guidance No 1 – Personal Data* and in the more specific *Data Protection Technical Guidance: Freedom of Information – Access to information about public authorities' employees*. The Commissioner does not consider this to be information the data subject would reasonably expect not to be disclosed, and there is certainly no evidence that disclosure would cause any kind of damage or distress to the data subject. The data subject's position within the organisation may be only moderately senior, but the information in question relates to their performance of a specific, defined role on the organisations behalf.
62. On balance, therefore, the Commissioner accepts that the processing (by disclosure) of the information redacted from the third paragraph of document 14 is necessary for the purposes of legitimate interests pursued by the applicant (and potentially more widely) and that such processing is not unwarranted in this particular case by reason of the rights, freedoms or legitimate interests of the data subject. Therefore, he accepts that the condition 6 in Schedule 2 can be met. In addition, taking account of all the factors considered in the previous paragraph, he can identify no reason why disclosure of the redacted information should be considered otherwise unfair or unlawful. The Commissioner therefore finds that Strathclyde Police were wrong to rely on section 38(1)(b) in relation to the text redacted from the third paragraph of document 14.



DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request from MacRoberts on behalf of T.O.M. Airdrie Limited, by withholding information under sections 25(1), 30 (c), 33(1)(b), 35(1)(a) and (b), 36(1) and (2) and section 38 (1)(b) of FOISA.

However, by applying the exemption in section 38(1)(b) to the information redacted from the third paragraph of document 14, the Chief Constable of Strathclyde Police failed to comply with Part 1 (and in particular section 1(1)) of FOISA. The Commissioner therefore requires the Chief Constable of Strathclyde Police to provide the applicant with a further copy of document 14 (without redaction of any text from paragraph 3) by 28 August 2008.

The Commissioner also finds that the Chief Constable of Strathclyde Police failed to comply with Part 1 of FOISA in considering the applicant's initial request not to comply with section 8(1)(b) of FOISA and in failing to deal with their request for review within the 20 working days allowed by section 21(1) of FOISA. In the circumstances, he does not require any action to be taken in respect of these breaches in response to this particular application.

Appeal

Should either MacRoberts or the Chief Constable of Strathclyde Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
14 July 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

(6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

(2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

(a) section 25;

...

(c) section 36(2);

...

(e) in subsection (1) of section 38 –

...

(ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- ...
- (b) states the name of the applicant and an address for correspondence; and

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers
- (b) would, or would be likely to, inhibit substantially-
- (i) the free and frank provision of advice; or
- (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

33 Commercial interests and the economy

- (1) Information is exempt information if-
- ...
- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).



35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;...

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.
- (2) Information is exempt information if-
 - (a) it was obtained by a Scottish public authority from another person (including another such authority); and
 - (b) its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.

38 Personal information

- (1) Information is exempt information if it constitutes-
 - ...
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
 - ...
- (2) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles; or



30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- (a) would, or would be likely to, prejudice substantially the maintenance of the convention of the collective responsibility of the Scottish Ministers
- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

Data Protection Act 1998

1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires—

...

“personal data” means data which relate to a living individual who can be identified—

- (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...



Schedule 1 – The data protection principles

Part 1 – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless —
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

....

- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...